Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 19 FEBRUARY 6, 1985 No. 6

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Administrative Programs, Public Services and Information Materials Division, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 85-8)

BONDS

Approval to use authorized facsimile signatures and seals; T.D. 79-241 modified; T.D. 80-302 superseded.

The use of facsimile seals and the facsimile signatures of James R. Zuhlke and Cynthia A. Larsen on Customs bonds by Washington International Insurance Company was approved on October 18, 1976, and published in T.D. 79-241. The use of the facsimile signature of John R. Ciago on Customs bonds by Washington International Insurance Company was approved on December 16, 1980, and added to T.D. 79-241 by T.D. 80-302.

Washington International Insurance Company now requests revision of the approval of use of facsimile signatures on Custom bonds to include only the following persons: John R. Ciago, Vice President and Attorney-in-Fact; Michael M. Davenport, Vice President and Attorney-in-Fact; Patricia M. Bonovich, Asst. Secretary and Attorney-in-Fact; Lynn Manaseri, Attorney-in-Fact; Julia A. Nevitt, Attorney-in-Fact.

Washington International Insurance Company has provided the Customs Service with a copy of each signature that is to be used and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures.

Accordingly, effective February 18, 1985, use of the above facsimile signatures on Custom bonds by Washington International Insurance Company is approved, T.D. 79-241 is modified by terminating approval for the use of the facsimile signatures of James R. Zuhlke and Cynthia A. Larsen (approval of use of facsimile seals remains in effect), and T.D. 80-302, approving the use of the facsimile signature of John R. Ciago is superseded.

The use of facsimile signatures and seals is without prejudice to Washington International Insurance Company's right to affix signatures and seals manually.

EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

CERTIFICATION

I, Morton J. Barnard, Secretary of WASHINGTON INTERNATIONAL INSURANCE COMPANY, certify that the following is a true copy of resolutions adopted by the board of directors of the company at a meeting held on December 20, 1984:

"RESOLVED:

1. That the signature of each of the following individuals: John R. Ciago, Vice President and Attorney-In-Fact; Michael M. Davenport, Vice President and Attorney-In-Fact; Patricia M. Bonovich, Asst. Secretary and Attorney-In-Fact; Lynn Manaseri, Attorney-In-Fact; Julia A. Nevitt, Attorney-In-Fact, and the seal of the company may be affixed to any Power of Attorney by facsimile and any such Power of Attorney bearing such facsimile signature or facsimile seal shall be valid and binding upon the company.

2. That the signature of any such duly appointed attorney-in-fact, and the seal of the company may be affixed to any U.S. Customs Bond or undertaking relating thereto by facsimile, and any U.S. Customs or undertaking relating thereto bearing such facsimile signature or facsimile seal affixed in the ordinary course of business shall be vailed and binding upon the company as if such signature seal were manually and individually applied by individuals duly authorized to execute bonds for the company."

Dated: December 20, 1984.

MORTON JOHN BARNARD,
Secretary.

Correction

19 CFR PART 177

(T.D. 85-4)

Tariff Classification of Television Camera Lens Systems

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in a document which advised the public of Customs decision to continue an established and uniform practice of classifying certain television camera lens systems as parts of television cameras in the Tariff Schedules of the United States. The document was published in the Federal Register on Wednesday, January 9, 1985 (50 FR 1044).

FOR FURTHER INFORMATION CONTACT: Bruce N. Shulman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In FR Doc. 85–609, appearing at page 1044 in the issue of Wednesday, January 9, 1985, it is stated that Customs will continue to classify certain television camera lens systems as parts of television cameras under item 685.10, Tariff Schedules of the United States (TSUS). At the time that this document was drafted, this TSUS designation was correct. However, section 124, Trade and Tariff Act of 1984 (Pub. L. 98–573, signed October 30, 1984) redesignated item 685.10, TSUS, as item 684.90, TSUS.

Accordingly, the following parenthetical phrase should be added at the conclusion of the paragraph entitled "Continuation of Practice" appearing on page 1045 of the document.

"(Item 685.10, TSUS, redesignated as item 684.90, TSUS, by section 124, Trade and Tariff Act of 1984, Pub. L. 98–573.)"

Dated: January 18, 1985.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

[Published in the Federal Register, January 25, 1985 (50 FR 3508)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Edward D. Re

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Morgan Ford
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Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 85–4)

THE UNITED STATES, PLAINTIFF *v.* GOLD MOUNTAIN COFFEE, LTD., ET AL., DEFENDANTS

Court No. 84–6–00858

Before: RESTANI, *Judge.*

Opinion and Order

[Plaintiff's motion for leave to amend complaint granted in part.]

(Decided January 16, 1985)

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, *Kevin C. Kennedy,* Civil Division, United States Department of Justice, for plaintiff.

Barnes, Richardson & Colburn (Andrew P. Vance, Michael A. Johnson, John J. Galvin and *Carl J. Laurino, Jr.),* and *Kaplan, Russin, Vecchi, Eytan & Collins (Mattaniah Eytan),* for defendants.

RESTANI, *Judge:* This matter is before the court on plaintiff's motion, pursuant to Rules 7, 15(a), 20 and 21 of the Rules of this court,[1] for leave to amend its amended complaint. Leave is sought to add as a party defendant, Boustead Commodities Limited ("Boustead") and to include allegations of an additional violation of § 592 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1592 (1982),[2] and of 19 U.S.C. §§ 1484 and 1485 (1982) [3] by all defendants.[4]

The amended complaint alleges that defendants improperly labeled Indonesian coffee as coming from China, thereby violating 19 U.S.C. § 1592. Now plaintiff, in its proposed "First Amended Complaint", alleges that defendants submitted a false declaration show-

[1] Defendant Teck Hock asserts that Rule 19 applies to plaintiff's request that Boustead Commodities Limited be added as a party defendant. Rule 19 does not apply here because Boustead is not needed for just adjudication of this action. Full relief among the original parties may be afforded without the addition of Boustead.

[2] 19 U.S.C. § 1592 (1982) provides for penalties for fraud, gross negligence, and negligence in the entering, introduction or attempt to enter or introduce merchandise into the commerce of the United States.

[3] 19 U.S.C. §§ 1484 and 1485 (1982) provide procedures for importation of merchandise into the United States.

[4] Plaintiff also seeks leave to amend to charge defendant Gold Mountain Holdings with a violation of 19 U.S.C. §§ 1484 and 1592 because defendant is allegedly not an owner or broker of the subject coffee beans and therefore is not entitled to enter merchandise into the United States under § 1484 as an "importer of record." Plaintiff later consented to striking this portion of its complaint when plaintiff responded to defendant Teck Hock's motion to strike. Consequently, the court stuck this portion of the amended complaint in its order of January 4, 1985 in this action.

ing routings of the coffee from the People's Republic of China to Hong Kong and then to Oakland, when in fact the coffee had been routed from Singapore to Hong Kong and then to Oakland. This routing information, plaintiff claims, is a material violation of 19 U.S.C. §§1484 and 1485 in that the Customs Service would have more closely scrutinized the entries had a routing from Singapore been disclosed at the time of entry.

In addition to alleging further misdeeds by defendants, plaintiff seeks leave to amend its amended complaint to name Boustead, a British company, as an additional party defendant, alleging the same violations as have been alleged against the other defendants. Defendant Teck Hock purportedly owns a 20 percent equity interest in Boustead and Teck Hock consigned the subject coffee to Boustead. Boustead in turn consigned the coffee to Defendant Gold Mountain Coffee, Ltd.

Plaintiff's original complaint in this action was filed on June 19, 1984. Trial is scheduled to commence February 25, 1985.

Rule 15(a) of the Rules of this court provides that leave to amend pleadings "shall be freely given when justice so requires." *See* 6 C. Wright and A. Miller, Federal Practice and Procedure §1484 at 417 (1971). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits." *Foman* v. *Davis*, 371 U.S. 178, 182 (1962); *see Zenith Radio Corp.* v. *United States*, 4 CIT 202, 203 n.1 (1982). In the absence of such concerns as undue delay, bad faith, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to an opposing party or futility of amendment, leave to amend, as the rules require, should be "freely given." *Foman* at 182.

Defendant Teck Hock argues that the court should not exercise its broad discretionary power to grant leave to amend the complaint because plaintiff's additional allegations are allegedly meritless (and therefore futile) and would result in delay of this action (thereby prejudicing the parties responding to the amended pleading). Defendant Teck Hock asserts that plaintiff's allegations regarding the routing of the coffee are immaterial and that the addition of Boustead as a defendant is unnecessary. Defendant further asserts that plaintiff fails to sufficiently particularize the circumstances of the fraud alleged, as required by Rule 9(b), and that this court lacks personal jurisdiction over Boustead.

Contrary to the first of defendant Teck Hock's assertions, the court finds that plaintiff's additional claims against defendants and Boustead are not patently futile or meritless. False statements regarding routing may or may not prove to be material. Defendant, in its current filings, attempts to argue the merits of plaintiff's allegations. Opposition to the motion for leave to amend is not the appropriate vehicle for addressing the merits of these claims. *See WIXT Television, Inc.* v. *Meredith Corp.*, 506 F.Supp. 1003, 1010

(N.D.N.Y. 1980). In addition, there is no indication that plaintiff's amendments will delay progress in resolving this matter or will prejudice defendants. Plaintiff has time to serve Boustead before trial and Boustead has had notice of these proceedings. If, as this case progresses, it becomes apparent that the addition of Boustead as a party defendant will result in delay, the court will consider severing the claims against Boustead. Furthermore, the addition of Boustead is in the interest of completeness and judicial economy and is fully in accord with Rules 20 and 21. Rules 20 and 21, involving, *inter alia*, the addition of parties, are to be construed liberally in order to promote complete resolution of disputes, thereby preventing multiple lawsuits. *See League to Save Lake Tahoe* v. *Tahoe Regional Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977); *Helene Curtis Industries* v. *Sales Affiliates*, 105 F.Supp. 886, 900 (S.D.N.Y.), *aff'd*, 199 F.2d 732 (2d Cir. 1952) (both discussing the analogous Fed. R. Civ. P. rules).

The court agrees with Teck Hock that plaintiff's claims aganst Boustead are not sufficiently particular to constitute a proper fraud complaint. Allegations that Boustead "aided and abetted" the alleged violations do not adequately describe Boustead's connection to the violations. But plaintiff alleges gross negligence and negligence against Boustead in addition to fraud charges. Thus, even though the claims are insufficiently particular for fraud purposes, they are still sufficient for negligence purposes.[5]

By allowing plaintiff to amend the complaint to add Boustead as a defendant, the court is not deciding whether or not the court has jurisdiction over Boustead. The court finds, however, that plaintiff has made allegations which, if true, might lead to a finding that assertion of jurisdiction over Boustead would satisfy traditional notions of fairness.[6] Therefore, it would not be in the interest of justice to summarily deny the addition of Boustead as a party. The court will address the matter of this court's jurisdiction over Boustead if an appropriate motion is filed with the court.

In conclusion, the court has not been presented with sufficient reason to refuse to grant plaintiff's leave to amend the complaint.

Accordingly, plaintiff's motion to amend its complaint is granted. Plaintiff is hereby

ORDERED to file within 10 days of this Order a first amended complaint consistent with this decision and this court's January 4, 1985 order to strike matter from the amended complaint.

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[5] Plaintiff may allege Boustead's connection to the violations with more particularity in its new amendment.

[6] *Oxford First Corp.* v. *PNC Liquidating Corp.*, 372 F.Supp. 191 (E.D. Pa. 1974) dealing with a federal district court's exercise of personal jurisdiction based on extraterritorial (nationwide) service power in a securities case, is a useful analogy. There the court, unlike this one, was a court which normally operates within restricted territorial limits within the United States. In exercising jurisdiction under the exceptional service of process procedures applicable to the enforcement of the securities laws, the court applied a multipart test to determine whether assuming jurisdiction satisfied basic concepts of fairness. Although minimum contacts and other considerations raised by constitutional due process requirements were applied as a matter of fairness, the application of the test was not based on a constitutional requirement of due process. Whatever the reason for its application, a basic fairness test should be applied in order to determine whether personal jurisdiction over Boustead should be assumed.

(Slip Op. 85–5)

F.W. MYERS & CO., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 83–3–00477

Before FORD, *Judge.*

[Plaintiff's motion for summary judgment denied; defendant's cross-motion for summary judgment granted; dismissed.]

(Decided January 16, 1985)

Bedros Odian for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Barbara M. Epstein*), for the defendant.

FORD, *Judge:* This action involves the classification of air inlets and end kits imported from Canada and entered at the Port of Champlain-Rouses Point, District of Ogdensburg, New York. Plaintiff contests the denial of a timely protest filed with respect to the merchandise at issue. Jurisdiction is pursuant to 19 U.S.C. § 1514(a) and 28 U.S.C. § 1581(a).

The parties are before the Court on cross-motions for summary judgment. The subject merchandise was originally classified by the Customs Service under item 657.25, Tariff Schedules of the United States (TSUS), and assessed with duty at a rate of 8.6 percent *ad valorem.* Subsequent to the filing of this action, defendant abandoned its classification and, by amending its answer, concluded the merchandise is more specifically provided for under item 653.00, TSUS, also dutiable at 8.6 percent *ad valorem.*

Plaintiff contends the articles involved are properly subject to classification alternatively under TSUS item 666.00, item 870.40, or item 870.45, and thereby entitled to duty-free treatment. These provisions cover, in general, agricultural machinery, equipment, implements and parts thereof. Plaintiff further argues the Customs Service is required to classify identical merchandise the same in all Customs Districts pursuant to Section 8, Article I of the United States Constitution. Defendant maintains its amended claim of classification and assessment of duties is correct and proper.

The statutory provisions pertinent to this matter provide as follows:

TARIFF SCHEDULES OF THE UNITED STATES, 19 U.S.C. § 1202

Schedule 6, part 3, subpart F, item 653.00:

Hangars and other buildings, bridges, bridge sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, columns, pillars, and posts, and other structures and parts of structures, all the foregoing of base metal:

Of iron or steel:

* * * * * * *

653.00 Other .....

Schedule 6, part 4, subpart C, headnote 1:

The provisions of item 666.00 for "agricultural and horticultural implements not specially provided for" do not apply to any of the articles provided for in schedule 6, part 2, part 3 (subparts A through F, inclusive), part 5 (except item 688.45), or part 6, or to any of the articles specially provided for elsewhere in the tariff schedules, but interchangeable agricultural and horticultural implements are classifiable in item 666.00 even if mounted at the time of importation on a tractor provided for in part 6B of this schedule.

Item 666.00:

Machinery for soil preparation and cultivation, agricultural drills and planter, fertilizer spreaders, harvesting and threshing machinery, hay or grass mowers (except lawn mowers), farm wagons and carts, milking machines, on-farm equipment for the handling or drying of agricultural and horticultural implements not specially provided for, and parts of any of the foregoing ..... Free

TARIFF SCHEDULES OF THE UNITED STATES, 19 U.S.C. § 1202—Continued

Schedule 8, part 7, headnote 2:

The provisions of items 870.40 and 870.45 do not apply to—

(i) articles of textile materials; articles provided for in schedule 5; articles of leather or of fur on the skin;

(ii) articles provided for in schedule 6, part 2, part 3 (subparts A through F except items 652.13 through 652.38, inclusive, 652.84, 652.88, 653.00 and 653.01), part 5 (except item 688.45) or part 6, but interchangeable agricultural and horticultural implements are classifiable in item 870.40 even if mounted at the time of importation on a tractor provided for in part 6B of schedule 6;

(iii) ball or roller bearings, including such bearings with integral shafts, and parts thereof, provided for in part 6B of schedule 6;

(iv) articles provided for in item 666.00.

Item 870.40:

Machinery, equipment, and implements to be used for agricultural or horticultural purposes ..... Free

Item 870.45:

Parts to be used in articles provided or in item 666.00, whether or not such parts are chiefly used as parts of such articles and whether or not covered by a specific provision within the meaning of general interpretative rule 10(ij) ..... Free

19 U.S.C. § 1202, general interpretative rule 10(ij):

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

Clause 1, Section 8, Article I, U.S. Constitution:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the Common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

The imported merchandise consists of air inlets and end kits, including pallets, pallet doors, frames, hardware and rods, which together form a manually operated mechanism used to control the flow of air into poultry barns. Merchandise identical to that which is the subject of this action was entered and classified variously

under TSUS items 666.00, 870.40, and 870.45, at the Port of Highgate Springs, District of St. Albans, Vermont. The issues before the Court, therefore, concern not only the proper classification of the merchandise but whether the Customs Service is required to classify identical merchandise the same in all Customs Districts.

Plaintiff's initial challenge to the Government's amended claim of classification focuses on the legislative history of TSUS items 870.40 and 870.45 which, plaintiff argues, requires the imported merchandise be accorded duty-free status. In support of this proposition plaintiff offers three alternative classifications. Item 870.40, TSUS, provides duty-free status for "machinery, equipment, and implements to be used for agricultural * * * purposes." Item 666.00, TSUS, gives similar treatment to "machinery, * * * on-farm equipment for the handling and drying of agricultural * * * products, and agricultural * * * implements not specifically provided for, and parts of any of the foregoing." TSUS item 870.45 admits duty-free "[p]arts to be used in articles provided for in item 666.00 * * *."

Defendant maintains the merchandise at issue to be specifically provided for in TSUS item 653.00 as "parts of structures" and as a matter of law is thereby precluded from classification under plaintiff's claimed alternative classifications.

It is undisputed that the articles involved in this case are parts of structures, mostly steel, and thus described by TSUS item 653.00. The parties similarly agree the imported merchandise is chiefly and actually used in poultry barns. The issue to be resolved, therefore, is whether the subject merchandise is more appropriately provided for by any of plaintiff's claimed classifications. For the reasons set forth herein, the Court finds for the defendant.

The merchandise involved herein is not classifiable under TSUS item 870.40 since it consists of parts of structures and is not machinery, equipment, or implements.[1] In much the same manner, the imported articles are not provided for under TSUS item 666.00, as they are not machinery, on-farm equipment, implements, or parts thereof. While plaintiff asserts the importation is comprised of parts of articles provided for under TSUS item 666.00 (presumably as parts of on-farm equipment), it fails to demonstrate how a poultry barn fits within the meaning of this provision. Furthermore, the applicable headnote (Headnote 1, Subpart C, Part 4 of Schedule 6, *supra*), specifically exempts from coverage under TSUS

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[1] It is well-established this type of merchandise does not constitute "machinery, equipment, or implements" within the context of the tariff provisions. See e.g. *Simon, Buhler Baumann Inc.* v. *United States*, v. 8 CCPA 273 (1918); *Liberty Lace & Netting Works* v. *United States*, 15 Cust. Ct. 180, C.D. 968 (1945); *Staalkat of America, Inc.* v. *United States*, 59 Cust. Ct. 241, C.D. 3930, *affirmed*, 56 CCPA 86 (1967); *Great Western Sugar Co., Railway Express Agency, Inc.* v. *United States*, 64 Cust. Ct. 127, C.D. 3971, *affirmed*, 59 CCPA 56 (1970).

The terms "machinery", "equipment", and "implement" are defined in *Webster's Third International Dictionary*, 1963 edition, at 1354, 768, and 1134, respectively, as follows:

Machinery * * * 1b: the constituting parts of a machine.

Equipment * * * 2a: the physical resources serving to equip a person or thing * * * as (1): the implements (as machinery or tools) used in an operation or activity: APPARATUS * * * (2): all the fixed assets other than land and building of a business enterprise * * * (b) a collection of such equipment.

Implements * * * 1a: an article * * * serving to equip. b: a tool or utensil forming part of equipment for work.

item 666.00 those articles which are provided for in Schedule 6, Part 3, Subpart F, which includes TSUS item 653.00. Item 870.45, TSUS, covering parts used in articles provided for in TSUS item 666.00, is thus inapplicable for the same reasons.

Plaintiff astutely points to the double negative contained in Headnote 2(ii), Part 7 of Schedule 8 in arguing the applicability of TSUS items 870.40 and 870.45. However, while those provisions can be applied to articles classified under TSUS item 653.00, the plain language of TSUS items 870.40 and 870.45 does not, in this instance, permit their application to the subject merchandise, which is neither machinery, equipment, or implements nor parts used in articles provided for in item 666.00, TSUS.

This interpretation is further supported by the legislative history of the Trade Agreements Act of 1979. In construing a statute, it is the duty of the Court to effect the intention of the legislature, which is to be searched for in the words employed and the legislative history. The first source for the determination of that intent is the statutory language, presumed to be used in its normal sense. *United States* v. *Esso Standard Oil Co.*, 42 CCPA 144, 151, C.A.D. 587 (1955). In the present case, the imported articles clearly fall within the category of merchandise described by TSUS item 653.00 and just as clearly are not described under any of plaintiff's claimed classifications. Moreover, examination of the legislative history of those items [2] reveals that inclusion thereunder is predicated upon classification under TSUS item 666.00, the distinguishing feature of the newer provisions being the elimination of the distinction between "chief" and "actual" use in agriculture. This distinction need not be reached here, as the merchandise in the case at bar does not fall under TSUS item 666.00 for the reasons previously noted.

The Court is cognizant of the long-standing intent of Congress to interpret the agricultural provisions of the Tariff Schedules liberally. In this instance, however, the Court is bound to an interpretation which follows the specific language of the provisions involved. Additionally, in light of the information before this Court, it does not appear that Congress intended to encompass articles of this nature in the newer provisions enacted in the Trade Agreements Act of 1979. The amended claim of classification under TSUS item 653.00 is therefore correct.

Plaintiff's remaining argument asserts the Customs Service must classify identical merchandise under the same TSUS provisions in

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[2] The legislative history of TSUS items 870.40 and 870.45, found at S. Rep. No. 96-249, 96th Cong., 1st Sess. 183 (1979) and H.R. Doc. No. 96-153, Part II, 96th Cong., 1st Sess. 503 (1979), reads in part:

> New item 870.40 will permit duty-free entry of articles described in item 666.00 which are not classified thereunder because their chief use is not in agriculture or horticulture. Item 870.40 will, therefore, permit duty-free entry of articles described in TSUS item 666.00 the actual use of which is in agriculture or horticulture. * * * New item 870.45 will permit duty-free entry of parts which would be classified under item 666.00 but for the existence of a TSUS provision covering those parts which is more specific than item 666.00 * * * This amendment will override headnote 10(j) to the extent it excludes from the term "parts" in a TSUS provision parts which are specifically provided for in another TSUS provision."

all Customs Districts. Because articles identical to the subject merchandise were assessed under duty-free provisions at a different port, plaintiff contends its merchandise should be reliquidated and assessed in accordance with the assessment made at the Port of Highgate Springs.

This argument fails to consider that, by protesting the classification of its merchandise and bringing this action, plaintiff is ensuring uniformity of classification for this merchandise henceforth. Plaintiff has followed the statutorily mandated procedures for resolving the issue of proper classification. The fact that identical merchandise was classified differently at another port has no bearing on the proceedings before this Court. There is no evidence the Customs Service made the assessment in this case with the knowledge of any contrary assessments. As Judge Boe noted in *PPG Industries, Inc.* v. *United States*, 4 CIT 143 (1982):

> Clearly, the Congress did not intend to impose upon Customs officials across the Nation, who must handle thousands of entries each week, an obligation to ferret out information as to the duty-free character not only those entries entered within his own district but also with respect to entries of similar character in other districts, particularly where the information regarding such merchandise and the use thereof is singularly within the knowledge of the importer . . . . The very justification for conferring upon this court, formerly the United States Customs Court, national jurisdiction is to assure uniformity in the application of the Customs laws throughout the United States where, as recognized, the administrative determinations in the respective Customs districts and regions may conflict dure to error in construction or lack of individual knowledge of the facts. [P. 148.]

There is no reason, therefore, for the Court to adopt contrary assessments made at a different port and thus subrogate the contested resolution of the classification issue set forth herein. For the foregoing reasons, plaintiff's motion for summary judgment is denied; defendant's cross-motion for summary judgment is granted, and the action is hereby dismissed. Judgment will be entered accordingly.

Appeals to the U.S. Court of Appeals for the Federal Circuit

APPEAL 84-1414 Grover Piston Ring, Inc. *v.* United States—CLASSIFICATION—PARTS OF LINEAL HYDRAULIC MOTORS—HYDRAULIC CYLINDERS—Appeal from Slip Op. 84-56, filed June 27, 1984, affirmed January 9, 1985.

APPEAL 85-510 Inter-Pacific Corp. *v.* The United States of America, Court No. 77-1-00044—FOOTWEAR—Appeal from Slip Op. 84-97, filed on September 25, 1984. Dismissed, on Appellant's motion to dismiss, December 3, 1984.

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U.S. Customs Service

Treasury Decisions

United States Court of International Trade

U.S. GOVERNMENT PRINTING OFFICE : 1985 O - 466-218